

By: Solomons

H.B. No. 3245

Substitute the following for H.B. No. 3245:

By: Swinford

C.S.H.B. No. 3245

A BILL TO BE ENTITLED

1 AN ACT

2 relating to certain protections for customers in the restructured  
3 electric services market.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 39.101, Utilities Code, is amended by  
6 amending Subsection (h) and adding Subsections (i), (j), (j-1),  
7 (k), (l), (m), (n), (o), (p), and (q) to read as follows:

8 (h) A retail electric provider, power generation company,  
9 aggregator, or other entity that provides retail electric service  
10 may not disconnect service to a residential customer during an  
11 extreme weather emergency or on a weekend day. The entity providing  
12 service shall defer collection of the full payment of bills that are  
13 due during an extreme weather emergency until after the emergency  
14 is over and shall work with customers to establish a pay schedule  
15 for deferred bills. For purposes of this subsection, "extreme  
16 weather emergency" means [~~a period when~~]:

17 (1) a period when the previous day's highest  
18 temperature did not exceed 32 degrees Fahrenheit and the  
19 temperature is predicted to remain at or below that level for the  
20 next 24 hours according to the nearest National Weather Service  
21 reports; [~~or~~]

22 (2) a day for which the National Weather Service  
23 forecasts that the [~~issues a~~] heat index will reach or exceed 105  
24 degrees Fahrenheit in [~~advisory for~~] any part of a county in the

1 relevant service territory;[7] or

2 (3) a period when, [such an advisory has been issued]  
3 on any one of the previous two calendar days, the National Weather  
4 Service observes a heat index of 105 degrees Fahrenheit or more in  
5 any part of a county in the relevant service territory.

6 (i) During the period beginning July 1 and ending September  
7 30 of each year, a retail electric provider or other entity that  
8 provides retail electric service may not disconnect or authorize  
9 the disconnection of service to a residential customer who:

10 (1) shows that the customer is a low-income electric  
11 customer, as defined by Section 39.903(1), and requests, and  
12 complies with the terms of, a deferred payment plan described by  
13 Subsection (k);

14 (2) shows that the customer is a low-income electric  
15 customer, as defined by Section 39.903(1), is at least 65 years of  
16 age, and requests, and complies with the terms of, a deferred  
17 payment plan described by Subsection (m); or

18 (3) under commission rules, is designated as a  
19 critical care residential customer for whom an interruption or  
20 suspension of electric service will create a dangerous or  
21 life-threatening condition.

22 (j) On and after July 1, 2010, a retail electric provider or  
23 other entity that provides retail electric service shall provide  
24 clear notice of the legal protections available under Subsection  
25 (i) on or with each disconnection notice issued to a residential  
26 customer during the period beginning July 1 and ending September 30  
27 of each year.

1       (j-1) A retail electric provider or other entity that  
2 provides retail electric service shall provide clear notice of the  
3 legal protections available under Subsection (i) on or with an  
4 invoice issued to a residential customer during the period  
5 beginning July 1 and ending September 30 of each year. This  
6 subsection expires June 30, 2010.

7       (k) A retail electric provider or other entity that provides  
8 retail electric service, on request, shall offer a residential  
9 customer described by Subsection (i)(1) a deferred payment plan  
10 that allows the customer to avoid disconnection during the period  
11 provided by Subsection (i). The customer is eligible for a plan  
12 offered under this subsection if the customer:

13               (1) does not owe an outstanding balance from a  
14 deferred payment plan granted by any provider of electric service  
15 in a previous year that allowed the customer to avoid disconnection  
16 during the period provided by Subsection (i);

17               (2) pays a minimum of 33 percent of the outstanding  
18 balance due; and

19               (3) agrees to pay the remaining balance in equal  
20 installments over the next five billing cycles, unless the customer  
21 agrees to a lesser number of installments.

22       (l) A customer granted a deferred payment plan under  
23 Subsection (k) may continue to avoid disconnection during the  
24 period described by Subsection (i) by:

25               (1) paying the additional amounts that become due,  
26 including the installment amount due; or

27               (2) paying a minimum of 33 percent of the balance then

1 currently due, including any installment amount due, and agreeing  
2 to pay the recalculated remaining balance in equal installments  
3 over the next five billing cycles, unless the customer agrees to a  
4 lesser number of installments.

5 (m) A retail electric provider or other entity that provides  
6 retail electric service, on request, shall offer a residential  
7 customer described by Subsection (i)(2) a deferred payment plan  
8 that allows the customer to avoid disconnection during the period  
9 provided by Subsection (i) without payment of any outstanding  
10 balance until after September 30. The customer is eligible for a  
11 plan offered under this subsection if the customer agrees to pay:

12 (1) a minimum of 25 percent of the deferred charges  
13 when the first bill issued to the customer after September 30 is  
14 due; and

15 (2) the remaining balance in equal installments over  
16 the next five billing cycles, unless the customer agrees to a lesser  
17 number of installments.

18 (n) A retail electric provider or other entity that provides  
19 retail electric service shall allow a residential customer  
20 described by Subsection (i)(3) to pay unpaid amounts accumulated  
21 during the period provided by Subsection (i) over the next six  
22 billing cycles beginning with the first bill issued to the customer  
23 after September 30.

24 (o) A retail electric provider or other entity that provides  
25 retail electric service may encourage a residential customer  
26 described by Subsection (i)(2) or (3) to make a partial payment  
27 toward an amount deferred during the period provided by Subsection

1 (i), but the provider shall inform the customer clearly that the  
2 customer may not be disconnected for nonpayment before October 1  
3 following that period.

4 (p) Subsections (i) through (o) of this section do not apply  
5 to metered electric service sold to a residential customer on a  
6 prepaid basis. A critical care residential customer for whom an  
7 interruption or suspension of electric service will create a  
8 dangerous or life-threatening condition is not eligible for metered  
9 electric service sold on a prepaid basis.

10 (q) The commission by rule shall provide:

11 (1) uniform standards for an electric utility to apply  
12 when designating a critical care residential customer for whom an  
13 interruption or suspension of electric service will create a  
14 dangerous or life-threatening condition; and

15 (2) special protections and procedures for an electric  
16 utility to apply when disconnecting a critical care residential  
17 customer for whom an interruption or suspension of electric service  
18 will create a dangerous or life-threatening condition.

19 SECTION 2. Section 39.151(c), Utilities Code, is amended to  
20 read as follows:

21 (c) The commission shall certify an independent  
22 organization or organizations to perform the functions prescribed  
23 by this section. The commission shall apply the provisions of this  
24 section and Sections 39.1511, 39.1512, ~~and~~ 39.1515, and 39.1516  
25 so as to avoid conflict with a ruling of a federal regulatory body.

26 SECTION 3. Subchapter D, Chapter 39, Utilities Code, is  
27 amended by adding Section 39.1516 to read as follows:

1       Sec. 39.1516. RETAIL ELECTRIC MARKET MONITOR. (a) An  
2 independent organization certified under Section 39.151 shall  
3 contract with an entity selected by the commission to act as the  
4 commission's retail electric market monitor to detect and prevent  
5 market manipulation strategies, unfair, misleading, or deceptive  
6 practices and to recommend measures to enhance the efficiency of  
7 the retail market.

8       (b) The independent organization shall provide to the  
9 personnel of the retail market monitor:

10           (1) full access to the organization's records that  
11 concern operations, settlement, and reliability of the retail  
12 market; and

13           (2) other support and cooperation the commission  
14 determines is necessary for the retail market monitor to perform  
15 the retail market monitor's functions.

16       (c) The independent organization shall use money from the  
17 rate authorized by Section 39.151(e) to pay for the retail market  
18 monitor's activities.

19       (d) The commission is responsible for ensuring that the  
20 retail market monitor has the resources, expertise, and authority  
21 necessary to monitor the retail electric market effectively and  
22 shall adopt rules and perform oversight of the retail market  
23 monitor as necessary. The retail market monitor shall operate  
24 under the supervision and oversight of the commission. The  
25 commission shall retain all enforcement authority conferred under  
26 this title, and this section may not be construed to confer  
27 enforcement authority on the retail market monitor or to authorize

1 the commission to delegate the commission's enforcement authority  
2 to the retail market monitor. The commission by rule shall define:

3 (1) the retail market monitor's monitoring  
4 responsibilities, including reporting obligations and limitations;

5 (2) the standards for funding the retail market  
6 monitor, including staffing requirements;

7 (3) qualifications for personnel of the retail market  
8 monitor; and

9 (4) ethical standards for the retail market monitor  
10 and the personnel of the retail market monitor.

11 (e) In adopting rules governing the standards for funding  
12 the retail market monitor, the commission shall consult with a  
13 subcommittee of the independent organization's governing body to  
14 receive information on how money is or should be spent for market  
15 monitoring functions. Rules governing ethical standards must  
16 include provisions designed to ensure that the personnel of the  
17 retail market monitor are professionally and financially  
18 independent from market participants. The commission shall develop  
19 and implement policies that clearly separate the policymaking  
20 responsibilities of the commission and the monitoring, analysis,  
21 and reporting responsibilities of the retail market monitor.

22 (f) The retail market monitor immediately shall report  
23 directly to the commission any potential market manipulations and  
24 any discovered or potential violations of commission rules or rules  
25 of the independent organization.

26 (g) The personnel of the retail market monitor may  
27 communicate with commission staff on any matter without

1 restriction.

2 (h) The retail market monitor annually shall submit to the  
3 commission and the independent organization a report that  
4 identifies market design flaws and recommends methods to correct  
5 the flaws. The commission and the independent organization shall  
6 review the report and evaluate whether changes to rules of the  
7 commission or the independent organization should be made.

8 SECTION 4. Section 39.157, Utilities Code, is amended by  
9 amending Subsection (a) and adding Subsection (a-1) to read as  
10 follows:

11 (a) The commission shall monitor market power associated  
12 with the generation, transmission, distribution, and sale of  
13 electricity in this state. On a finding that market power abuses or  
14 other violations of this section have occurred or are occurring,  
15 the commission shall require reasonable mitigation of the market  
16 power by one or any combination of the following:

17 (1) ordering the construction of additional  
18 transmission or distribution facilities;

19 (2) [~~by~~] seeking an injunction or civil penalties as  
20 necessary to eliminate or to remedy the market power abuse or  
21 violation as authorized by Chapter 15;

22 (3) [~~by~~] imposing an administrative penalty as  
23 authorized by Chapter 15;

24 (4) ordering refunds to affected parties pursuant to  
25 Section 17.157;

26 (5) with regard to the wholesale market, ordering  
27 refunds to affected parties in a manner established by the

1 commission; or

2           (6) [~~, or by~~] suspending, revoking, or amending a  
3 certificate or registration as authorized by Section 39.356.

4           (a-1) The commission shall permit the office, in exercising  
5 its powers to represent residential and small commercial consumers,  
6 to participate in enforcement proceedings to seek refunds for  
7 alleged market power abuses or manipulation of the wholesale  
8 market.       Section 15.024(c) does not apply to an administrative  
9 penalty imposed under this section.     For purposes of this  
10 subchapter, market power abuses are practices by persons possessing  
11 market power that are unreasonably discriminatory or tend to  
12 unreasonably restrict, impair, or reduce the level of competition,  
13 including practices that tie unregulated products or services to  
14 regulated products or services or unreasonably discriminate in the  
15 provision of regulated services.     For purposes of this section,  
16 "market power abuses" include predatory pricing, withholding of  
17 production, precluding entry, and collusion.     A violation of the  
18 code of conduct provided by Subsection (d) that materially impairs  
19 the ability of a person to compete in a competitive market shall be  
20 deemed to be an abuse of market power.     The possession of a high  
21 market share in a market open to competition may not, of itself, be  
22 deemed to be an abuse of market power; however, this sentence shall  
23 not affect the application of state and federal antitrust laws.

24           SECTION 5.   Subchapter D, Chapter 39, Utilities Code, is  
25 amended by adding Section 39.1575 to read as follows:

26           Sec. 39.1575.   INVESTIGATORY AUTHORITY OVER RETAIL PRICES.

27           (a)   The commission shall investigate whether a retail electric

1 provider is abusing market power or engaging in unfair, misleading,  
2 or deceptive practices. Retail electric providers shall cooperate  
3 with the commission in any investigation and shall provide  
4 information requested.

5 (b) The commission may assess administrative penalties  
6 under Section 15.023 for any violation discovered under this  
7 section.

8 SECTION 6. Subchapter Z, Chapter 39, Utilities Code, is  
9 amended by adding Sections 39.928 and 39.929 to read as follows:

10 Sec. 39.928. COST OF NODAL MARKET IMPLEMENTATION. An  
11 independent organization certified under Section 39.151 may not  
12 pass through to a retail customer or retail electric provider a cost  
13 or charge associated with nodal wholesale market design  
14 implementation.

15 Sec. 39.929. PUBLICATION OF NATURAL GAS FUEL AND ELECTRIC  
16 ENERGY PRICING INFORMATION. (a) The commission shall publish on  
17 the Internet websites <http://www.puc.state.tx.us> and  
18 <http://www.powertochoose.org> charts or provide a link that  
19 compares the prices of:

- 20 (1) natural gas;  
21 (2) real-time or balancing electric energy; and  
22 (3) retail electricity.

23 (b) The commission shall provide that the charts be updated  
24 at least once each business day that the commission's offices are  
25 open.

26 SECTION 7. The Public Utility Commission of Texas shall  
27 adopt rules to implement the changes in law made by this Act as

1 quickly as practicable.

2           SECTION 8. This Act takes effect immediately if it receives  
3 a vote of two-thirds of all the members elected to each house, as  
4 provided by Section 39, Article III, Texas Constitution. If this  
5 Act does not receive the vote necessary for immediate effect, this  
6 Act takes effect September 1, 2009.